

County Clerks' Guide
To
Kentucky Marriage Law

**Office of the Attorney General
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County Clerks' Guide to Kentucky Marriage Law is one of a series of short works intended to provide public officials with an understanding of the legal concepts that they encounter in the course of their duties. This booklet, based on a similar work by retired Assistant Attorney General Charles Runyan, answers questions that frequently arise in the issuance and recording of marriage licenses.

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Prohibited and restricted marriages

Definition of marriage

KRS 402.005 defines the marriage relationship as follows:

As used and recognized in the law of the Commonwealth, “marriage” refers only to the civil status, condition, or relation of one (1) man and one (1) woman united in law for life, for the discharge to each other and the community of the duties legally incumbent upon those whose association is founded on the distinction of sex.

Marriage to certain relatives prohibited

KRS 402.010(1) provides in part that “no marriage shall be contracted between persons who are nearer of kin to each other by consanguinity, whether of the whole or half-blood, than second cousins.” The purpose of this provision is to prevent the degrading of the family and the offending of morals and decency and the interbreeding within such prohibited classes of consanguinity. See *Culver v. Union & New Haven Trust Co.*, Conn., 179 A. 487 (1935); *Osoinach v. Watkins*, Ala., 180 So. 577 (1938); and OAG 71-480.

Marriage between cousins

Marriage between first cousins is prohibited by KRS 402.010. There are no exceptions to the prohibition and such a marriage is incestuous and void. See *Ex parte Bowen*, 247 S.W.2d 379 (Ky. 1952) and OAG 80-300.

Kentucky does not recognize such a marriage between first cousins even if it is consummated in another state. In *Dannelli v. Dannelli's Adm'r.*, 4 Bush 51 (67 Ky. Rep. 51) (1868), the court said that in Kentucky it is the settled law that a marriage valid in the country where celebrated is to be held valid in other countries where the parties may be domiciled, although it would have been invalid by the law of the subsequent domicile if it had been originally celebrated there. However, polygamous and incestuous marriages are exceptions to the rule since such marriages are contrary to the law of nature and are subversive of the good order of society. Thus public policy prohibits even the recognition of a marriage between first cousins in Kentucky even though it may be legal elsewhere.

In connection with the term “cousin” the court said in part in *Culver v. Union & New Haven Trust Co.*, Conn., 179 A. 487, 489 (1935), as follows:

Primarily and specifically the term “cousin,” without more, means the son or daughter of one's uncle or aunt (called more fully own, first, or full cousin, or cousin-german). In its usual and ordinary acceptance it does not connote second or third cousins. The children of first cousins are second cousins to each other; the

children of one's first cousins are sometimes popularly called his second cousins, but are more properly, his "first cousins once removed."

Marriage with person mentally incompetent

Marriage with a person who has been adjudged mentally disabled by a court of competent jurisdiction is prohibited and void under KRS 402.020(1)(a).

Marriage where there is a husband or wife living

Marriage where there is a husband or wife living, from whom the person marrying has not been divorced, is prohibited and void under KRS 402.020(1)(b).

Marriage not solemnized in the presence of an authorized person

Marriage when not solemnized or contracted in the presence of an authorized person or society is prohibited and void under KRS 402.020(1)(c). However, see KRS 402.070 stating that no marriage solemnized before a person professing to have authority to perform marriages **shall be invalid** for the lack of such authority if it is consummated with the belief of either or both of the parties that the person had such authority.

Marriage between members of same sex

Kentucky Constitution, Section 223A, ratified November 2, 2004, provides:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

Marriage between members of the same sex is prohibited. See KRS 402.020(1)(d).

KRS 402.040(1) provides that if a resident of this state marries in another state, the marriage will be valid in Kentucky if it was valid in the state where solemnized. However, KRS 402.040(2) provides:

A marriage between members of the same sex is against Kentucky public policy and shall be subject to the prohibitions established in KRS 402.045.

KRS 402.045(1) provides in part that, "A marriage between members of the same sex which occurs in another jurisdiction shall be void in Kentucky." KRS 402.045(2) provides that "Any rights granted by virtue of the [same sex] marriage, or its termination, shall be unenforceable in Kentucky courts."

Thus under these legislative enactments no county clerk, or deputy or assistant county clerk can legally issue a marriage license to applicants of the same sex. KRS 402.990(6)

provides that any clerk who knowingly issues a marriage license to persons prohibited from marrying shall be guilty of a Class A misdemeanor and removed from office by the judgment of the court in which the clerk is convicted.

Marriage between more than two persons

Marriage between more than two persons is prohibited and void under KRS 402.020(1)(e). See also the definition of “marriage” under KRS 402.005.

Marriage with person under age 16 - marriage with person under age 18 and consent

The age of majority in Kentucky for purposes of the marriage law is 18 and persons of that age or older do not need the consent of the parents, a parent, or a guardian. For many years, prior to the 1998 statutory amendments to KRS Chapter 402, Kentucky did not have a minimum age below which no person could marry. Generally, the minimum age for marriage is now 16. Thus, persons 16 years of age or older but under the age of 18 must obtain consent to marry.

Under KRS 402.020(1)(f)1. marriage is prohibited and void with one exception (pregnancy) when at the time of the marriage, the person is under 16 years of age.

Under KRS 402.020(1)(f)2. marriage is prohibited and void with one exception (pregnancy) when at the time of marriage, the person is under 18 but over the age of 16, if the marriage is without the *consent* of the specifically designated person.

Consent must be obtained from the father or the mother of the person under 18 but over 16 if the parents are married, the parents are not legally separated, no legal guardian has been appointed for the person under 18 but over 16, and no court order has been issued granting custody of the person under 18 but over 16 to a party other than the father or mother.

Consent must be obtained from both the father and the mother, if both are living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the person under 18 but over 16 has been issued and is in effect.

Consent must be obtained from the surviving parent if the parents were divorced or legally separated, and a court order of joint custody to the parents of the person under 18 but over 16 was issued prior to the death of either the father or mother and that order remains in effect.

Consent must be obtained from the custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the person under 18 but over 16 has not been ordered.

Consent can be obtained from another person having lawful custodial charge of the person under 18 but over 16.

In view of the prohibitions placed upon the marriages of persons under the age of 16 and the restrictions placed upon the marriages of persons under 18 but over 16, the county clerk must exercise caution. If an applicant appears to be underage but asserts that he or she is of legal age, request some type of identification. If the applicant is under 18 but over 16 inquire as to the marital state of the applicant's parents. If the parents are divorced or legally separated request a copy of the court's decree relative to custody.

Under KRS 402.210 if either of the parties is under 18 but over 16 and *not before married*, no license shall issue without the consent required by KRS 402.020(1)(f)2., personally given or certified in writing to the clerk over the signature of the person consenting in accordance with the statutory provisions, attested by two subscribing witnesses and proved by the oath of one of the witnesses administered by the clerk. If the parties are personally unknown to the clerk, a license shall not issue until bond with good surety, in the penalty of \$100 is given to the Commonwealth, with condition that there is no lawful cause to obstruct the marriage.

While KRS 402.020(1)(f)2. states in part that the marriage of a person under the age of 18 but over 16 without the proper consent is prohibited and void, the federal court in *Holbert v. West*, 730 F. Supp. 50, 52-53 (E.D. Ky. 1990), concluded that such a marriage is merely voidable and is valid absent a court declaration to the contrary. See also KRS 402.030 relative to the court's authority to declare void certain marriages. The primary function of the clerk, however, is to determine whether a marriage license should be issued on the basis of the facts and information available. Whether the subsequent marriage is legal is a matter, ultimately, for the courts to resolve.

Special rule for underage pregnant female

In the case of pregnancy both KRS 402.020(1)(f)1. and 2. refer to KRS 402.020(1)(f)3. which provides that the male and female, or either of them, may apply to a district judge for permissions to marry, which application may be granted, in the discretion of the judge, in the form of a written order. There is a fee of \$5 for hearing each such application.

This provision applies not only to persons under 18 but over 16 but also to persons under 16. This constitutes an exception to the prohibition against marriage by persons under 16. Note that KRS 402.210(2) requires that if either of the parties is under 16, no license shall issue without the permission of a district judge, in the form of a certified copy of a written court order.

As relates to the pregnancy contingency set forth in the statutes, pregnancy must actually exist at the time application for a license is made. If, at the time of application, the baby has been born, this particular provision cannot be utilized by the underage applicant. OAG 83-109.

Where pregnancy of a person under 18 is claimed as a basis for issuance of the license, the pregnant female applicant, if she is a resident of Kentucky, should apply in the county of her residence unless she is a widow. KRS 402.080.

Where pregnancy is claimed under KRS 402.020(1)(f)2. by a person under 18 but over 16 and applications for permission to marry is made to a district judge the consent part of the statute

does not apply. The order of the district judge directing county clerk to issue the marriage license is sufficient.

Proxy marriages

Proxy marriages are not permitted in Kentucky since KRS 402.050(2) specifically provides in part that, “At least two persons in addition to the parties and the person solemnizing the marriage shall be present at every marriage.” Thus, to have a valid marriage the five statutorily required persons must all be in the same place at the same time. Thus, a clerk should not issue a marriage license if it is known that a marriage will be attempted at which all of the required participants will not be in the same place at the same time.

Common law marriages

In *Pendleton v. Pendleton*, 531 S.W.2d 507, 509-510 (Ky. 1976), the court stated:

But in this state there is no such thing as a common-law marriage. What might be a common-law marriage somewhere else is no marriage at all here. As distinguished from being “void” or “illegal” it simply does not exist as a “marriage” of any kind.

However, in *Vaughn v. Hufnagel*, 473 S.W.2d 124, 125 (Ky. 1971), the court said in part that this state does not recognize common-law marriage within the boundary lines of this state but it may recognize one legalized by another state.

The application

Oath not authorized

Neither the county clerk nor a deputy county clerk has the authority to require submission to an oath in connection with the marriage license application. Nothing in KRS Chapter 402 requires an application for a marriage license to be given under oath. *Whitaker v. Commonwealth*, 367 S.W.2d 831 (Ky. 1963).

Application to be made by female

An application for a marriage license may be made by written request of the female. The male may join in the application but it appears essential that the application be made and signed by the female. Normally both the man and woman execute an application for the license in person in the clerk's office but only the female's signature to the application is essential. See KRS 402.080, KRS 402.100 and KRS 402.110 as well as OAG 72-50. However, both parties must be present when a marriage license is issued. OAG 82-416.

Identification - Reasonable proof of age required – Social Security Number

There is nothing in KRS Chapter 402 suggesting that the clerk can require a birth certificate from applicants. Furthermore, there is no statutory provision covering proof of age of the applicants. However, any reasonable requirement of the clerk as to obtaining evidence of proof of age would probably be upheld by the courts as the General Assembly has set forth requirements for marriage relative to persons over the age of 16 but under the age of 18 and has, with one exception, enacted a prohibition against marriage by persons under the age of 16. If the clerk is to carry out the legislative mandates as to underage marriages and the consent requirements he or she must resort to some reasonable tactic to determine the age of applicants. Thus requiring a copy of a birth certificate or driver's license or an affidavit of the parents, a parent, or the guardian as to the applicant's age would all appear to be reasonable attempts to carry out the statutory requirements. See OAG 82-453.

In reference to the use of Social Security number for identification purposes, KRS 402.100(4), enacted in 2006, provides:

A Social Security number shall be requested as a means of identification of each party but shall not be recorded on the marriage license or certificate. Other means of identification may also be requested if a party does not have a Social Security number. The Social Security number shall be forwarded to the appropriate agency within the Cabinet for Health and Family Services that is responsible for enforcing child support, and the number shall be stored by that agency with a nonidentifying numeric. The Social Security number shall not be available for public release.

The marriage license

License required

No marriage can be solemnized without a license. KRS 402.080.

Who may issue

The marriage license is issued by the county clerk. KRS 402.080.

Where license is issued

The license is to be issued in the county of the female's residence, if she lives in Kentucky, unless she is eighteen years of age or over or a widow. See KRS 402.080. If the female is not a Kentucky resident or if she is over eighteen or a widow the license may be obtained from any county court clerk in Kentucky.

No waiting period or blood test

The requirement relative to the three day waiting period before the license issues has been repealed as have the requirements pertaining to a blood test. Kentucky currently has no requirement that the parties submit to a blood test or wait a certain period of time before a marriage license may be issued.

Valid for 30 days

Under KRS 402.105 a marriage license is valid for thirty days, including the date it is issued, and after that time it is invalid. Thus if the marriage is not solemnized within the thirty day period the parties must apply for a new license. The license may be used in any Kentucky county but it cannot be used anywhere but in Kentucky.

Form of license

Each county clerk must use the form prescribed by the Department for Libraries and Archives when issuing a marriage license. The form must include the information expressly required by KRS 402.100; the form may also provide for the entering of additional information prescribed by the Department for Libraries and Archives.

Subsection (1) of KRS 402.100 deals with the authorization statement of the clerk and vital information required of the marriage license section proper, including the date and place the license is issued, and the signature of the county clerk or deputy clerk issuing the license.

Subsection (2) of KRS 402.100 provides for a marriage certificate, which includes a statement by the person performing the marriage ceremony that the ceremony was performed. That statement must include the name and title of the person performing the ceremony, the names of the persons married, the date and place of the marriage, and the names of two witnesses. That marriage certificate shall also include a statement by the person performing the marriage ceremony as to his legal qualification under KRS Chapter 402 to perform the ceremony, such statement to include the name of the county or city where his license to perform Kentucky marriages was issued, or, in the case of religious societies authorized by KRS 402.050(1)(c) to solemnize marriages, the name of the city or county where the religious society is incorporated. In view of the 1996 repeal of KRS 402.060, which had required a minister or priest to obtain a license to perform a marriage, that section of KRS 402.100(2) requiring the person performing the marriage to set forth the county or city where his or her license to perform marriage ceremonies was issued is no longer applicable. The marriage certificate must also contain a dated signature of the person performing the ceremony.

Pursuant to KRS 402.100(2)(d), there must be entered in such record a signed statement by the county clerk (or deputy clerk) of the county in which the marriage license was issued that the marriage certificate was recorded. Such statement must indicate the name of the county and the date the marriage certificate was recorded.

Subsection (3) of KRS 402.100 sets forth the information to be entered in the certificate to be delivered by the person solemnizing the marriage ceremony to the parties married.

KRS 402.110 states that the form of marriage license prescribed in KRS 402.100 shall be uniform throughout the state and every license blank shall contain the identical words and figures prescribed by that statute.

Subsection (4) of KRS 402.100, in reference to used, storage, and prohibition of public release of Social Security numbers, provides:

A Social Security number shall be requested as a means of identification of each party but shall not be recorded on the marriage license or certificate. Other means of identification may also be requested if a party does not have a Social Security number. The Social Security number shall be forwarded to the appropriate agency within the Cabinet for Health and Family Services that is responsible for enforcing child support, and the number shall be stored by that agency with a nonidentifying numeric. The Social Security number shall not be available for public release.

Delivery of license

In issuing the license the clerk must deliver it in its entirety to the licensee. The clerk shall see to it that every blank space required to be filled out by the applicants is filled out before delivering it to the licensee.

Issuance when clerk is absent

KRS 402.240 provides that in the absence of the county clerk, or during a vacancy in the office, the county judge/executive may issue the license and, in so doing, he shall perform the duties and incur all the responsibilities of the clerk. The county judge/executive shall return a memorandum to that effect to the clerk and the memorandum shall be recorded as if the license had been issued by the clerk.

Marriage manual

KRS 402.270 provides for the publication by the Human Resources Coordinating Commission of Kentucky of a marriage manual for distribution to all applicants for a marriage license. The manual shall include, but not be limited to, material on family planning, proper health and sanitation practices, nutrition, consumer economics, and the legal responsibility of spouses to each other and as parents to their children. Upon publication of the manual copies are to be sent to each county clerk for distribution to each applicant for a marriage license.

Solemnization of marriage

Who may solemnize

Marriage shall be solemnized only by clergy, justices and judges of the Court of Justice, retired justices and judges of the Court of Justice except those removed for cause or convicted of a felony, county judge/executives, such justices of the peace and fiscal court commissioners as the Governor or the county judge/executive authorizes, and certain religious societies. See KRS 402.050(1)(a), (b) and (c). A deputy county judge/executive has no authority to solemnize a marriage. OAG 82-145. There is no provision in the statute that a minister be at least eighteen years of age and thus the qualifications of a minister, including age, are left up to the particular religious denomination. OAG 80-256. Ordained clergyman or minister. OAG 84-96; OAG 83-240; OAG 78-303; OAG 76-603.

If the group in question is organized and maintained for the support of public worship of God and the applicant is recognized as a minister of such group, he would qualify as a minister. A “religious society” in Kentucky is a broad term and includes any group organized and maintained for the public worship of God. The “recognition” of a minister can take the form of ordination or license or any other form which expresses clearly the fact that a religious group recognizes the person or looks to the person as a minister of that specific group. See OAG 63-24; OAG 72-805; OAG 76-603.

Who must be present

Under KRS 402.050(2) at least two persons in addition to the parties and the person solemnizing the marriage must be present at every marriage. The witnesses to the marriage may be under the age of eighteen if, in the opinion of the person solemnizing the marriage, they are sufficiently intelligent to observe, recollect and narrate (if it were ever necessary) the critical facts as to the marriage and identity of the parties to the marriage, and have a moral sense of obligation to speak the truth, if called upon to do so. OAG 79-323.

When license to perform marriages required

The provisions of KRS 402.060(1), which had required a minister or priest who resided in Kentucky or who served as a minister or priest in a place of worship in Kentucky to obtain a license and to post bond to perform marriages in Kentucky, were repealed by the 1996 Regular Session of the General Assembly (1996 Acts, Chapter 205, SB 68). At the present time there are no licensing requirements applicable to ministers or priests who wish to perform marriages in Kentucky.

Of course, under KRS 402.050(1)(b) all of the justices and judges of the Court of Justice, the county judge/executives, and such justices of the peace and fiscal court commissioners as have been authorized by the Governor or a county judge/executive to perform marriages are automatically entitled to solemnize marriages in Kentucky without a license. In those situations

where a justice of the peace or a fiscal court commissioner has been authorized to perform marriages, it is assumed that some kind of written authorization will have been issued by the Governor or county judge/executive.

Where person may solemnize marriages

A minister or priest may perform marriages anywhere in Kentucky. See *Manning v. Street*, 130 S.W.2d 735, 737 (Ky. 1939).

All of the justices and judges of the Court of Justice and justices of the peace and fiscal court commissioners mentioned in KRS 402.050(1)(b) are entitled to solemnize marriages anywhere in Kentucky. See 55 C.J.S. Marriage § 29 (p.863) and 52 Am.Jur.2d Marriage § 40 (p.897).

Such solemnizing officials may solemnize a marriage, under a Kentucky marriage license, in an airplane flight while over Kentucky and in the air space within Kentucky's boundaries. OAG 72-620.

Nonresident minister or priest

The provisions of KRS 402.060(2), which dealt with a nonresident minister or priest obtaining a special license to solemnize one marriage in a particular county, were repealed by the 1996 Regular Session of the General Assembly (1996 Acts, Chapter 205, SB 68). At the present time there are no licensing requirements applicable to nonresident ministers or priests who wish to perform marriages in Kentucky.

Validity of marriage solemnized without authority

KRS 402.070 provides that no marriage solemnized before any person professing to have authority to perform marriages shall be invalid for the want of such authority if the marriage is consummated with the belief of the parties, or either of them, that the person performing the marriage had the authority and that they have been lawfully married. See *Arthurs v. Johnson*, 280 S.W.2d 504, 505 (Ky. 1955).

Return of license to clerk after ceremony

Return to be made within one month

KRS 402.220 provides that the person solemnizing the marriage or the clerk of the religious society before whom it was solemnized shall within one month return the license to the county clerk of the county in which it was issued, with a certificate of the marriage over his signature, giving the date and place of the marriage ceremony and the names of at least two of the persons present.

Even though the person solemnizing the marriage does not return the license and certificate to the county clerk within the one month period, the clerk has the duty and authority to file the certificate and record the data required by KRS 402.230.

When the license and certificate reach the clerk after the one month period has elapsed the clerk should make a note of the deadline date and the date of acceptance. See OAG 84-152. The marriage is not null and void because of the failure to return the license and certificate to the clerk within the time set forth in the statute.

Loss of license after solemnization of marriage

If the marriage ceremony has been properly performed but the person performing the marriage has lost the license and certificate or the license and certificate have been lost in the mail, the clerk can issue a certified “duplicate” marriage license to the parties. This document could then be delivered to the person solemnizing the marriage for filling out the certificate and returning such duplicate license to the clerk for filing. Before a duplicate license is issued the clerk should require the minister and the married persons to sign an affidavit that the minister did on a certain day take the original marriage license and solemnize the marriage between the parties involved. See OAG 82-242.

Marriage solemnized outside Kentucky

A Kentucky marriage license cannot legally be used for marriage purposes in another state; if it has been, it cannot legally be filed in the office of a Kentucky county clerk. See OAG 72-622.

Clerk's duties relative to filing

KRS 402.230 requires that the certificate be filed in the county clerk's office. The county clerk shall keep in a record book an indexed register of the parties' names, the date of the marriage, and the name of the person who solemnized the marriage.

Open records

Marriage records are open records; social security numbers shall not be available for public release

Marriage records on file in the clerk's office are public records subject to public inspection under the Kentucky Open Records Act (KRS 61.870 to KRS 61.884). See OAG 76-754 and OAG 76-493. Note, however, that social security numbers shall not be available for public release. KRS 402.100(4), enacted in 2006, provides:

A Social Security number shall be requested as a means of identification of each party but shall not be recorded on the marriage license or certificate. Other means

of identification may also be requested if a party does not have a Social Security number. The Social Security number shall be forwarded to the appropriate agency within the Cabinet for Health and Family Services that is responsible for enforcing child support, and the number shall be stored by that agency with a nonidentifying numeric. The Social Security number shall not be available for public release.

Residency requirements

No provision as to length of residency

There is no statutory section dealing with length of residence requirements relative to obtaining a marriage license from a county clerk in Kentucky. KRS 402.080 merely provides in part that, “The license shall be issued by the clerk of the county in which the female resides at the time, unless the female is eighteen (18) years of age or over or a widow.” Even where the license must be issued in the county where the female resides at the time, there is no provision as to the length of that residency.

While KRS 402.080 concerns factual circumstances requiring that an application be made by a Kentucky resident in a certain county, it has no bearing on nonresidents. Under KRS Chapter 402 nonresidents may apply for a marriage license in any Kentucky county provided they comply with the applicable Kentucky statutory law. There is no provision disqualifying nonresidents from applying for a marriage license in Kentucky. See OAG 82-416.

Penalty provisions

The penalty provisions pertaining to the marriage statutes are set forth in KRS 402.990.

Penalties applicable to clerks and deputies

Any clerk who knowingly issues a marriage license to any persons prohibited by KRS Chapter 402 from marrying shall be guilty of a Class A misdemeanor and removed from office by the judgment of the court in which he is convicted. KRS 402.990(6).

Any clerk who knowingly issues a marriage license in violation of his duty under KRS chapter 402 shall be guilty of a Class A misdemeanor. KRS 402.990(7).

If any deputy clerk or any person other than a county clerk knowingly issues a marriage license in violation of KRS chapter 402, or for a prohibited marriage, he shall be guilty of a Class A misdemeanor. KRS 402.990(8).

Any county clerk who violates any of the provisions of KRS 402.110 (which requires that the license be completely filled out) or KRS 402.230 (which requires that the certificate be filed in the clerk's office) shall be guilty of a violation. KRS 402.990(10).

Penalties applicable to other parties

Any party to a marriage prohibited by KRS 402.010 shall be guilty of a Class B misdemeanor. If the parties continue after conviction to cohabit as man and wife, either or both of them shall be guilty of a Class A misdemeanor. KRS 402.990(1).

Any person who aids or abets the marriage of any person who has been adjudged mentally disabled, or attempts to marry, or aids or abets any attempted marriage with any such person shall be guilty of a Class B misdemeanor. KRS 402.990(2).

Any authorized person who knowingly solemnizes a marriage prohibited by this chapter shall be guilty of a Class A misdemeanor. KRS 402.990(3).

Any unauthorized person who solemnizes a marriage under pretense of having authority, and any person who falsely impersonates the father, mother, or guardian of an applicant in obtaining a license shall be guilty of a Class D felony. KRS 402.990(4).

Any person who falsely and fraudulently represents or impersonates another, and in such assumed character marries that person, shall be guilty of a Class D felony. Indictment under this subsection shall be found only upon complaint of the injured party and within two (2) years after the commission of the offense. KRS 402.990(5).

Any person failing to make the return required of him by KRS 402.220 shall be guilty of a violation. KRS 402.990(11).

Appendix: KRS Chapter 402

UNOFFICIAL TEXT OF STATUTES

FOR INFORMATION ONLY

This printing of a portion of the Kentucky Revised Statutes does not constitute an official version of these statutes and is provided for informational purposes only. For the official text of statutes and for the current supplementation, the user should consult an official edition of the Kentucky Revised Statutes.

402.005 Definition of Marriage

As used and recognized in the law of the Commonwealth, “marriage” refers only to the civil status, condition, or relation of one (1) man and one (1) woman united in law for life, for the discharge to each other and the community of the duties legally incumbent.

402.010 Degree of relationship that will bar marriage.

(1) No marriage shall be contracted between persons who are nearer of kin to each other by consanguinity, whether of the whole or half-blood, than second cousins.

(2) Marriages prohibited by subsection (1) of this section are incestuous and void.

402.020 Other prohibited marriages.

(1) Marriage is prohibited and void:

(a) With a person who has been adjudged mentally disabled by a court of competent jurisdiction;

(b) Where there is a husband or wife living, from whom the person marrying has not been divorced;

(c) When not solemnized or contracted in the presence of an authorized person or society;

(d) Between members of the same sex;

(e) Between more than two (2) persons; and

(f) 1. Except as provided in subparagraph 3, of this paragraph, when at the time of the marriage, the person is under sixteen (16) years of age;

2. Except as provided in subparagraph 3, of this paragraph, when at the time of marriage, the person is under eighteen (18) but over sixteen (16) years of age, if the marriage is without the consent of:

a. The father or the mother of the person under eighteen (18) but over sixteen (16), if the parents are married, the parents are not legally separated, no legal guardian has been appointed for the person under eighteen (18) but over sixteen (16) to a party other than the father or mother;

b. Both the father and the mother, if both be living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) but over sixteen (16) has been issued and is in effect;

c. The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) but over sixteen (16) was issued prior to the death of either the father or mother, which order remains in effect;

d. The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the person under eighteen (18) but over sixteen (16) has not been ordered; or

e. Another person having lawful custodial charge of the person under eighteen (18) but over sixteen (16), but

3. In case of pregnancy the male and female, or either of them, specified in subparagraph 1. or 2. of this paragraph, may apply to a District Judge for permission to marry, which application may be granted, in the form of a written court order, in the discretion of the judge. There shall be a fee of five dollars (\$5) for hearing each such application.

(2) For purposes of this section “parent,” “father” or “mother” means the natural parent, father or mother of a child under eighteen (18) unless an adoption takes place pursuant to legal process, in which case the adoptive parent, father or mother shall be considered the parent, father or mother to the exclusion of the natural parent, father or mother, as applicable.

402.030 Courts may declare certain marriages void.

(1) Courts having general jurisdiction may declare void any marriage obtained by force or fraud.

(2) At the instance of any next friend, courts having general jurisdiction may declare any marriage void where the person was under eighteen (18) but over sixteen (16) years of age at the time of the marriage, and the marriage was without the consent required by KRS 402.020(1)(f) and has not been ratified by cohabitation after that age.

(3) At the instance of any next friend, courts having general jurisdiction may declare void any marriage where:

(a) The person was under sixteen (16) years of age at the time of the marriage;

(b) The marriage was not conducted with the permission of a District Judge, as required by KRS 402.020(1)(f)3., in the form of a written court order; and

(c) The marriage has not been ratified by cohabitation after the person reached eighteen (18) years of age.

402.040 Marriage in another state.

(1) If any resident of this state marries in another state, the marriage shall be valid here if valid in the state where solemnized, unless the marriage is against Kentucky public policy.

(2) A marriage between members of the same sex is against Kentucky public policy and shall be subject to the prohibitions established in KRS 402.045.

402.045 Same-sex marriage in another jurisdiction void and unenforceable.

(1) A marriage between members of the same sex which occurs in another jurisdiction shall be void in Kentucky.

(2) Any rights granted by virtue of the marriage, or its termination, shall be unenforceable in Kentucky courts.

402.050 Who may solemnize marriage — Persons present.

(1) Marriage shall be solemnized only by:

(a) Ministers of the gospel or priests of any denomination in regular communion with any religious society;

(b) Justices and judges of the Court of Justice, retired justices and judges of the Court of Justice except those removed for cause or convicted of a felony, county judges/executive, and such justices of the peace and fiscal court commissioners as the Governor or the county judge/executive authorizes; or

(c) A religious society that has no officiating minister or priest and whose usage is to solemnize marriage at the usual place of worship and by consent given in the presence of the society, if either party belongs to the society.

(2) At least two (2) persons, in addition to the parties and the person solemnizing the marriage, shall be present at every marriage.

402.060 Minister or priest to have license to solemnize marriage — Special license for nonresident.

(Repealed—1996 Acts, Chapter 205, SB 68)

402.070 Marriage not invalid for want of authority to solemnize.

No marriage solemnized before any person professing to have authority therefor shall be invalid for the want of such authority, if it is consummated with the belief of the parties, or either of them, that he had authority and that they have been lawfully married.

402.080 Marriage license required— Who may issue.

No marriage shall be solemnized without a license therefor. The license shall be issued by the clerk of the county in which the female resides at the time, unless the female is eighteen (18) years of age or over or a widow, and the license is issued on her application in person or by writing signed by her, in which case it may be issued by any county clerk.

402.090 Soliciting persons to be married by particular person — Sharing remuneration — Solicitation by minister or justice of the peace.

(1) No person shall, for compensation or reward, solicit, persuade, entice, direct or induce any persons to go before any person authorized to solemnize marriage to be married. No such person shall receive for such services any part of the remuneration paid for solemnizing the marriage.

(2) No person authorized to solemnize marriage shall pay, give to, or divide or share with any other person any sum of money or other thing obtained by him for solemnizing marriage.

(3) No person authorized to solemnize marriage shall solicit, persuade, entice, direct or induce any persons to come before him to be married.

402.100 Marriage license — Marriage certificate.

Each county clerk shall use the form prescribed by the Department for Libraries and Archives when issuing a marriage license. This form shall provide for the entering of all of the information required in this section, and may also provide for the entering of additional information prescribed by the Department for Libraries and Archives. The form shall consist of:

(1) A marriage license which provides for the entering of:

(a) An authorization statement of the county clerk issuing the license for any person or religious society authorized to perform marriage ceremonies to unite in marriage the persons named;

(b) Vital information for each party, including the full name, date of birth, place of birth, race, condition (single, widowed, or divorced), number of previous marriages, occupation, current residence, relationship to the other party, and full names of parents; and

(c) The date and place the license is issued, and the signature of the county clerk or deputy clerk issuing the license.

(2) A marriage certificate which provides for the entering of:

(a) A statement by the person performing the marriage ceremony or the clerk of the religious society authorized to solemnize the marriage ceremony that the ceremony was performed. The statement shall include the name and title of the person performing the ceremony or the name of the religious society solemnizing the marriage, the names of persons married, the date and place of the marriage, and the names of two (2) witnesses;

(b) A statement by the person performing the marriage ceremony of his legal qualification under this chapter to perform the ceremony, such statement to include the name of the county or city where his license to perform marriage ceremonies was issued or, in the case of religious societies authorized by KRS 402.050(c) to solemnize marriages, the name of the city or county where the religious society is incorporated. The provisions of this paragraph shall not be construed to require the clerk of a religious society to be present at the marriage so long as the witnesses of the society are present;

(c) A dated signature of the person performing the ceremony; and

(d) A signed statement by the county clerk or a deputy county clerk of the county in which the marriage license was issued that the marriage certificate was recorded. The statement shall indicate the name of the county and the date the marriage certificate was recorded.

(3) A certificate to be delivered by the person performing the marriage ceremony or the clerk of the religious society performing the marriage ceremony to the parties married. This certificate shall provide for the entering of:

(a) A statement by the person performing the marriage ceremony or the clerk of the religious society performing the marriage ceremony that the ceremony was performed. The statement shall include the name and title of the person performing the ceremony, or the name of the religious society performing the ceremony, the names of persons married, the date and place of the marriage, the names of two (2) witnesses, and the following information as recorded on the license authorizing the marriage: the date the license was issued, the name of the county clerk under whose authority the license was issued, and the county in which the license was issued; and

(b) A dated signature of the person performing the ceremony or the clerk of the religious society performing the ceremony.

(4) A Social Security number shall be requested as a means of identification of each party but shall not be recorded on the marriage license or certificate. Other means of identification may also be requested if a party does not have a Social Security number. The Social Security number shall be forwarded to the appropriate agency within the Cabinet for Health and Family Services that is responsible for enforcing child support, and the number shall be stored by that agency with a nonidentifying numeric. The Social Security number shall not be available for public release.

402.105 Marriage license valid for thirty days.

A marriage license shall be valid for thirty (30) days, including the date it is issued, and after that time it shall be invalid.

402.110 Marriage license to be uniform and completely filled out.

The form of marriage license prescribed in KRS 402.100 shall be uniform throughout this state, and every license blank shall contain the identical words and figures provided in the form prescribed by that section. In issuing the license the clerk shall deliver it in its entirety to the licensee. The clerk shall see to it that every blank space required to be filled by the applicants is so filled before delivering it to the licensee.

402.210 Issuance of license when either party under eighteen.

(1) If either of the parties is under eighteen (18) but over sixteen (16) years of age and not before married, no license shall issue without the consent required by KRS 402.020(1)(f), personally given or certified in writing to the clerk over the signature of the person consenting in accordance with KRS 402.020(1)(f), attested by two (2) subscribing witnesses and proved by the oath of one (1) of the witnesses, administered by the clerk. If the parties are personally unknown to the clerk, a license shall not issue until bond, with good surety, in the penalty of one hundred dollars (\$100) is given to the Commonwealth, with condition that there is no lawful cause to obstruct the marriage.

(2) If either of the parties is under sixteen (16) years of age, no license shall issue without the permission of a District Judge, as required by KRS 402.020(1)(f)3., in the form of a certified copy of a written court order.

402.220 Return of license and certificate to clerk after ceremony.

The person solemnizing the marriage or the clerk of the religious society before whom it was solemnized shall within one (1) month return the license to the county clerk of the county in which it was issued, with a certificate of the marriage over his signature, giving the date and place of celebration and the names of at least two (2) of the persons present.

402.230 Filing of marriage certificate — Record of marriages.

The certificate shall be filed in the county clerk's office. The county clerk shall keep in a record book a fair register of the parties' names, the person by whom, or the religious society by which, the marriage was solemnized, and the date when the marriage was solemnized, and shall keep an index to the book in which the register is made.

402.240 County judge/executive to issue license in absence of clerk.

In the absence of the county clerk, or during a vacancy in the office, the county judge/executive may issue the license and, in so doing, he shall perform the duties and incur all the responsibilities of the clerk. The county judge/executive shall return a memorandum thereof to the clerk, and the memorandum shall be recorded as if the license had been issued by the clerk.

402.250 Circuit court may affirm or avoid marriage.

Where doubt is felt as to the validity of a marriage, either party may, by petition in Circuit Court, demand its avoidance or affirmance; but where one (1) of the parties was within the age of consent at the time of marriage, the party who is of proper age may not bring such a proceeding for that cause against the party under age.

402.260 Receivership for person under eighteen who marries without judicial consent.

If any person under eighteen (18) years of age marries without the consent required by KRS 402.020(1)(f), the court having general jurisdiction in the county of his residence shall, on the petition of a next friend, commit his estate to a receiver, who, upon giving bond, shall hold his estate and, after deducting a reasonable compensation for his services, pay out the rents and profits to his separate use during his infancy, under the direction of the court. When the person arrives at the age of eighteen (18), the receiver shall deliver his estate to him, unless the court considers it for his benefit to continue it in the hands of the receiver.

402.270 Marriage manual — Preparation by Human Resources Coordinating Commission for distribution to marriage applicants.

(1) The Human Resources Coordinating Commission of Kentucky shall prepare a marriage manual for distribution to all applicants for a marriage license. The manual shall include, but not be limited to, material on family planning, proper health and sanitation practices, nutrition, consumer economics, and the legal responsibilities of spouses to each other and as parents to their children.

(2) When the manual is approved it shall be printed by the Human Resources Coordinating Commission. Copies of the manual shall be sent to the county clerk of each county. Each county clerk shall give a copy to each applicant for a marriage license.

402.310 Sickle Cell Disease Detection Act.

KRS 402.310 to 402.340 may be cited as the Kentucky Sickle Cell Disease Detection Act of 1972.

402.320 Marriage license applicants to be tested for trait or genetically transmitted disease affecting hemoglobin — Counseling carriers.

Every physician examining applicants for a marriage license may obtain an appropriate blood specimen from each applicant and forward same to the Division of Laboratory Services, Cabinet for Health and Family Services, or to a laboratory approved by the cabinet, to ascertain the existence or nonexistence of sickle cell trait or sickle cell disease, or any other genetically transmitted disease which affects hemoglobin. In the event the laboratory tests indicate that both applicants are carriers of a trait or disease, the physician may provide genetic counseling or refer the applicants to the cabinet or to an agency approved by the cabinet for such counseling.

402.340 Secretary for health services to administer and enforce Sickle Cell Disease Detection Act.

The secretary for health and family services shall adopt rules and regulations for the proper administration and enforcement of KRS 402.310 to 402.340.

402.990 Penalties.

(1) Any party to a marriage prohibited by KRS 402.010 shall be guilty of a Class B misdemeanor. If the parties continue after conviction to cohabit as man and wife, either or both of them shall be guilty of a Class A misdemeanor.

(2) Any person who aids or abets the marriage of any person who has been adjudged mentally disabled, or attempts to marry, or aids or abets any attempted marriage with any such person shall be guilty of a Class B misdemeanor.

(3) Any authorized person who knowingly solemnizes a marriage prohibited by this chapter shall be guilty of a Class A misdemeanor.

(4) Any unauthorized person who solemnizes a marriage under pretense of having authority, and any person who falsely personates the father, mother, or guardian of an applicant in obtaining a license shall be guilty of a Class D felony.

(5) Any person who falsely and fraudulently represents or personates another, and in such assumed character marries that person, shall be guilty of a Class D felony. Indictment under this subsection shall be found only upon complaint of the injured party and within two (2) years after the commission of the offense.

(6) Any clerk who knowingly issues a marriage license to any persons prohibited by this chapter from marrying shall be guilty of a Class A misdemeanor and removed from office by the judgment of the court in which he is convicted.

(7) Any clerk who knowingly issues a marriage license in violation of his duty under this chapter shall be guilty of a Class A misdemeanor.

(8) If any deputy clerk or any person other than a county clerk knowingly issues a marriage license in violation of this chapter, but not for a prohibited marriage, he shall be guilty of a Class A misdemeanor, and if he knowingly issues a license for a marriage prohibited by this chapter, he shall be guilty of a Class A misdemeanor.

(9) Any person who violates any of the provisions of KRS 402.090 shall be guilty of a violation.

(10) Any county clerk who violates any of the provisions of KRS 402.110 or 402.230 shall be guilty of a violation.

(11) Any person failing to make the return required of him by KRS 402.220 shall be guilty of a violation.